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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

CORY SPENCER, an individual;  
DIANA MILENA REED, an  
individual; and COASTAL  
PROTECTION RANGERS, INC., a  
California non-profit public benefit  
corporation;

Plaintiffs,

v.

LUNADA BAY BOYS; THE  
INDIVIDUAL MEMBERS OF THE  
LUNADA BAY BOYS, including but  
not limited to SANG LEE, BRANT  
BLAKEMAN, ALAN JOHNSTON aka  
JALIAN JOHNSTON, MICHAEL  
RAE PAPAYANS, ANGELO  
FERRARA, FRANK FERRARA,  
CHARLIE FERRARA, and N.F.; CITY  
OF PALOS VERDES ESTATES;  
CHIEF OF POLICE JEFF KEPLEY, in  
his representative capacity; and DOES 1  
– 10,

Defendants.

Case No. 2:16-cv-02129-SJO-RAO

**NOTICE OF MOTION AND  
MOTION BY DEFENDANT  
MICHAEL R. PAPAYANS FOR  
SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE FOR SUMMARY  
ADJUDICATION OF CLAIMS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

[Fed. Rules Civ. Proc., Rule 56]

[*Concurrently Filed*: Decl. of Peter Haven  
w/ Exhibits; Statement of Facts and Law]

Date: August 21, 2017  
Time: 10:00 a.m.  
Place: Courtroom 10C  
350 W. 1<sup>st</sup> Street  
Los Angeles, California 90012

Hon. S. James Otero

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 21, 2017, at 10:00 a.m., or as soon  
thereafter as the matter may be heard by the Hon. S. James Otero, United States  
District Court Judge, in Courtroom 10C of the above-indicated United States

1 District Court, located at 350 W. 1<sup>st</sup> Street, Los Angeles, California 90012,  
 2 Defendant MICHAEL R. PAPAYANS (“Papayans”) will and hereby does move the  
 3 Court for summary judgment, or in the alternative summary adjudication of claims.

4 This motion is made on the grounds that there is no genuine issue as to any  
 5 material fact and that Papayans is entitled to judgment as a matter of law. Plaintiffs  
 6 Cory Spencer, Diana Reed, and Coastal Protection Rangers, Inc. (“Plaintiffs”) have  
 7 never met or interacted with Papayans. Plaintiffs lack sufficient evidence to  
 8 maintain their causes of action against Papayans for alleged: (1) interference with  
 9 Plaintiffs’ constitutional rights under California’s Bane Act, (2) public nuisance,  
 10 (3) assault, (4) battery, and (5) negligence. *See Federal Rules of Civil Procedure*,  
 11 Rule 56(c)(1)(B) (“showing that the materials cited do not establish the ... presence  
 12 of a genuine dispute, or that an adverse party cannot produce admissible evidence to  
 13 support the fact.”); *Celotex Corp. v. Catrett* (1986) 477 U.S. 317, 325 (“the burden  
 14 on the moving party may be discharged by ‘showing’ – that is, pointing out to the  
 15 district court – that there is an absence of evidence to support the nonmoving party’s  
 16 case.”); *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc.* (9<sup>th</sup> Cir. 2000) 210  
 17 F.3d 1099, 1102 (“the moving party must either produce evidence negating an  
 18 essential element ... or show that the nonmoving party does not have enough  
 19 evidence of an essential element to carry its ultimate burden of persuasion at trial.”).

20 If for any reason the Court does not entirely grant Papayans summary  
 21 judgment, the Court is requested to grant Papayans partial summary judgment  
 22 and/or summary adjudication as follows:

23 1. Plaintiffs do not have evidence sufficient to prove that Papayans  
 24 committed a battery upon Plaintiffs;

25 2. Plaintiffs do not have evidence sufficient to prove that Papayans  
 26 committed an assault upon Plaintiffs;

1           3.     Plaintiffs do not have evidence sufficient to prove that Papayans was  
2 negligent toward Plaintiffs;

3           4.     Plaintiffs do not have evidence sufficient to prove that Papayans  
4 committed acts of public nuisance against Plaintiffs; and/or

5           5.     Plaintiffs do not have evidence sufficient to prove that Papayans  
6 interfered with or attempted to interfere with Plaintiffs' exercise or enjoyment of  
7 constitutional rights in violation of the Bane Act, Cal. *Civil Code* §52.1(b).

8           This motion is based upon this Notice, the accompanying Memorandum of  
9 Points and Authorities, the concurrently filed Statement of Uncontroverted Facts  
10 and Conclusions of Law and Declaration of Peter T. Haven with Exhibits, all  
11 pleadings and papers on file in this action, and upon such other matters as may be  
12 presented to the Court at or before the hearing.

13           This Motion is made following the conference of counsel pursuant to Local  
14 Rule 7-3 which took place on July 14, 2017.

15           Defendant Papayans also joins in the summary judgment motions of all other  
16 Defendants. "It is permissible for a party to adopt the motion of another party when  
17 the facts between the parties are essentially the same and the adoption would  
18 promote judicial efficiency." *Vazquez v. Central States Joint Bd.*, 547 F.Supp.2d  
19 833, 867. (N.D.Ill. 2008).

20  
21 DATED: July 24, 2017

HAVEN LAW

22  
23 By: /s/ Peter T. Haven  
24 Peter T. Haven  
25 Attorney for Defendant  
26 MICHAEL R. PAPAYANS  
27  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND SUMMARY OF MOTION**

Plaintiffs Cory Spencer, Diana Milena Reed, and Coastal Protection Rangers, Inc., a California corporation (“Plaintiffs”), assert claims of alleged harassment and “localism” at a State beach. In addition to claims against the City of Palos Verdes Estates and the City’s Police for alleged failure to stop the claimed localism, the Plaintiffs also bring causes of action against individual Defendants for alleged acts of localism. One of these individual Defendants is Michael Papayans (“Papayans”).

The Plaintiffs, however, have never met Papayans or interacted with him, and they have no evidence sufficient to show that he is involved in a civil conspiracy, association, or gang. There is no genuine issue as to any material fact and Papayans is entitled to judgment as a matter of law.

**II. BRIEF FACTS**

**A. Plaintiffs Assert Tort Claims and Civil Conspiracy Allegations**

Plaintiffs allege they lack complete access to Lunada Bay, a state beach in Palos Verdes Estates, due to alleged localism. “Localism is a territorial practice whereby resident surfers attempt to exclude nonresident beachgoers and surfers through threats, intimidation, and violence.” Complaint, p. 7, ¶ 17. Plaintiffs allege that Papayans and the other individual Defendants are engaged in a “Civil Conspiracy” to act as a gang or association known as the “Lunada Bay Boys”: “Defendant LUNADA BAY BOYS is a criminal gang whose members are primarily engaged in criminal and nuisance activities which constitute Bane Act violations and a public nuisance.” Complaint, Civil Conspiracy Allegations, p. 26, ¶ 52. Based on these Civil Conspiracy Allegations, the Plaintiffs allege that the Lunada Bay Boys are an unincorporated association under California *Code of Civil*

1 *Procedure* § 369.5 or *Corporations Code* § 18035(a), and/or a “criminal street  
2 gang” under California *Penal Code* § 186.22(f). Complaint, ¶¶ 16, 17.

3 Plaintiffs assert the following causes of action against the individual  
4 Defendants, including Papayans: (1<sup>st</sup>) Bane Act, California *Civil Code* § 52.1(b),  
5 alleged interference or attempted interference with the Plaintiffs’ exercise or  
6 enjoyment of their federal and state constitutional rights; (2<sup>nd</sup>) public nuisance,  
7 California *Civil Code* §§ 3479, 3480; (6<sup>th</sup>) assault, (7<sup>th</sup>) battery, (8<sup>th</sup>) negligence.

8  
9 **B. Plaintiffs Did Not Meet or Interact with Papayans**

10 The Plaintiffs have “heard” of Papayans, but they have never met or  
11 interacted with him. In their depositions, the Plaintiffs testified as follows:

12 Deposition of Plaintiff Corey Spencer

13 Q Do you know who Michael Papayans is?

14 A I know that’s a name that’s popped up a lot in Lunada Bay.

15 I know he’s allegedly a Bay Boy, and I’ve heard it but ...

16 Q I’m sorry. Go ahead. Are you finished?

17 A I’m finished.

18 Q Thank you.

19 To your knowledge, have you ever seen Michael Papayans?

20 A Not that I can recall. \* \* \*

21 Q To your knowledge, do you know if Michael Papayans had  
22 any involvement in these Lunada Bay incidents that you’ve  
23 described here today That you were personally involved with?

24 A I don’t know if he was there when I was there. I couldn’t answer that.

25 Declaration of Peter T. Haven (“Haven Decl.”), ¶ 3, Exhibit 1, Deposition of  
26 Plaintiff Cory Spencer (“Spencer Depo.”), 323:7-16, 324:18-23.

1        Deposition of Plaintiff Diana Reed

2        Q     Okay. Now, so you do – you are able to sort of put a face to the  
3               name of Michael Papayans, it's your understanding of what he  
4               looks like based on these videos; is that correct?

5        A     That's correct, yes.

6        Q     Do you know if you have ever personally seen Michael Papayans  
7               at Lunada Bay when you were there?

8        A     I don't remember personally seeing him myself. \* \* \*

9        Q     This is what you've heard, but you personally have never had any  
10              encounter with him to your knowledge?

11      A     I personally haven't had anything like person to person with him.

12      Haven Decl., ¶ 4, Exhibit 2, Deposition of Plaintiff Diana Reed ("Reed Depo."),  
13      370:18 – 371:2, 372:1-5.

14            The Plaintiffs' deposition testimony establishes that they have not seen, met  
15            or interacted with Papayans, and they have not had any incidents with him.

16            Similarly, there is no evidence of any interaction between Papayans and  
17            Plaintiff Coastal Protection Rangers, Inc., a California corporation.

18  
19            **C.     Papayans Was Involved in One Argument with a Non-Party**

20            Plaintiffs may rely on the fact that, in or about March 2014, Papayans got into  
21            a shouting match with a non-party, Christopher Taloa, who had started a social  
22            media campaign "game" against the local surfers to provoke them: "The game is to  
23            draw them out like a salve." Exhibit 3, Deposition of Chris Taloa ("Taloa Depo."),  
24            265:8-12; 284:22-25; 320:25 – 323:4.

25            After starting this campaign, Taloa and Papayans got into a heated shouting  
26            argument one day at Lunada Bay. The argument was not physical, and Taloa did not  
27            press any charges:

1 Q. And you indicated to them [the Police] that you didn't want to press  
2 charges?

3 A. I didn't want to press charges. \* \* \*

4 Q. And you said he [Papayans] didn't do anything to me?

5 A. He didn't get physical with me.

6 Q. Okay. That's what you meant? He didn't get physical with you?

7 A. He didn't get physical with me.

8 Exhibit 4, Taloa Depo., 345:1-3: 365:17-21.

9 This incident does not evidence anything, and it did not involve the Plaintiffs.

10

11 **III. ARGUMENT**

12 **A. A Defendant Is Entitled to Summary Judgment if the Plaintiff Lacks**  
13 **Sufficient Evidence to Raise a Genuine Issue of Material Fact**

14 Rule 56(a) of the Federal Rules of Civil Procedure ("FRCP"), provides for a  
15 motion for summary judgment or partial summary judgment: "The court shall grant  
16 summary judgment if the movant shows that there is no genuine dispute as to any  
17 material fact and the movant is entitled to judgment as a matter of law."

18 A moving party may show there is no genuine dispute of material fact by  
19 "showing that the materials cited do not establish the ... presence of a genuine  
20 dispute, or that an adverse party cannot produce admissible evidence to support the  
21 fact." FRCP Rule 56(c)(1)(B).

22 "[T]he burden on the moving party may be discharged by 'showing' – that is,  
23 pointing out to the district court – that there is an absence of evidence to support the  
24 nonmoving party's case." *Celotex Corp. v. Catrett* (1986) 477 U.S. 317, 325.

25 "[T]he moving party must either produce evidence negating an essential element ...  
26 or show that the nonmoving party does not have enough evidence of an essential  
27  
28



1 element to carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine*  
 2 *Ins. Co., Ltd. v. Fritz Cos., Inc.* (9<sup>th</sup> Cir. 2000) 210 F.3d 1099, 1102.

3 “One of the principal purposes of the summary judgment rule is to isolate and  
 4 dispose of factually unsupported claims ....” *Celotex*, 477 U.S. at 324-325. “Rule  
 5 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her  
 6 own affidavits, or by the “depositions, answers to interrogatories, and admissions  
 7 on file,” designate ‘specific facts showing that there is a genuine issue for trial.’”  
 8 *Celotex* at 324.

9 Plaintiffs have not met or interacted with Papayans, and they have no  
 10 evidence sufficient to show that Papayans was involved in an alleged conspiracy.

#### 12 **B. Papayans Did Not Meet, Touch, Batter, or Assault the Plaintiffs**

13 To prove an assault, the Plaintiffs must prove, among other things, that the  
 14 “defendant acted with intent to cause harmful or offensive contact, or threatened to  
 15 touch plaintiff in a harmful or offensive manner[.]” To prove a battery, the  
 16 Plaintiffs must prove, among other things, that the “defendant touched plaintiff, or  
 17 caused plaintiff to be touched, with the intent to harm or offend plaintiff[.]” *Yun Hee*  
 18 *So v. Sook Ja Shin*, 212 Cal.App.4<sup>th</sup> 652, 668–69 (2013) (citations omitted).

19 Papayans did not meet or interact with the Plaintiffs, much less touch them.  
 20 There is no genuine issue of material fact. Plaintiffs cannot prove these claims.

#### 22 **C. Papayans Did Not Breach any Duty Owed to Plaintiffs**

23 “The elements of a negligence cause of action are the existence of a legal duty  
 24 of care, breach of that duty, and proximate cause resulting in injury.” *McIntyre v.*  
 25 *Colonies-Pac., LLC*, 228 Cal.App.4<sup>th</sup> 664, 671 (2014). Papayans did not meet or  
 26 interact with the Plaintiffs, so he did not owe, nor did he breach, any duty of care.  
 27 There is no genuine issue of material fact. Plaintiffs cannot prove this claim.



**D. Plaintiffs Did Not Suffer any Acts of Nuisance by Papayans**

To prove their public nuisance claim against Papayans, the Plaintiffs must show that Papayans substantially and unreasonably interfered with the Plaintiffs' exercise of common public rights. "[P]ublic nuisances ... are 'offenses against, or interferences with, the exercise of rights common to the public,' such as public health, safety, peace, comfort, or convenience. To qualify as a public nuisance, the interference must be both substantial and objectively unreasonable." *Citizens for Odor Nuisance Abatement v. City of San Diego*, 8 Cal.App.5th 350, 358 (2017).

The Plaintiffs must also show that Papayans caused the Plaintiffs harm. "Causation is an essential element of a public nuisance claim. A plaintiff must establish a 'connecting element' or a 'causative link' between the defendant's conduct and the threatened harm. \* \* \* A plaintiff must show the defendant's conduct was a 'substantial factor' in causing the alleged harm. *Citizens for Odor Nuisance Abatement v. City of San Diego*, 8 Cal.App.5th 350, 359 (2017).

Papayans did not meet or interact with the Plaintiffs, so he did not subject them to any acts of public nuisance. There is no genuine issue of material fact. Plaintiffs cannot prove this claim.

**E. Papayans Did Not Interfere with Plaintiffs' Constitutional Rights**

California's Bane Act provides legal or equitable relief for an "individual whose exercise or enjoyment of [federal or state constitutional] rights ... has been interfered with, or attempted to be interfered with ...." California Civil Code §52.1(b). Thus, Plaintiffs must prove that Papayans interfered with, or attempted to interfere with, the Plaintiffs' exercise or enjoyment of their constitutional rights.

Papayans did not meet or interact with the Plaintiffs, and he did not interfere with their constitutional rights. There is no genuine issue of material fact. Plaintiffs cannot prove this claim.

1           **F. Plaintiffs Have No Evidence that Papayans Is a Co-Conspirator**

2           The Plaintiffs do not have evidence sufficient to prove that Papayans is an  
3 alleged co-conspirator, and therefore an alleged gang or association member:

4           Because civil conspiracy is so easy to allege, plaintiffs have a weighty  
5 burden to prove it. They must show that each member of the conspiracy  
6 acted in concert and came to a mutual understanding to accomplish a  
7 common and unlawful plan, and that one or more of them committed  
8 an overt act to further it. It is not enough that the [alleged conspirators]  
9 knew of an intended wrongful act, they had to agree – expressly or tacitly –  
10 to achieve it. Unless there is such a meeting of the minds, ‘the independent  
11 acts of two or more wrongdoers do not amount to a conspiracy.’

12 *Choate v. County of Orange*, 86 Cal.App.4<sup>th</sup> 312, 333 (2000) (citations omitted).

13           Papayans did not meet or interact with Plaintiffs, and they have no evidence  
14 sufficient to show that he is a co-conspirator, gang member, or association member.  
15 There is no genuine issue of material fact. Plaintiffs cannot prove their claims.

16  
17           **IV. CONCLUSION**

18           The Plaintiffs have not met or interacted with Papayans, and they have no  
19 evidence sufficient to show that he is a co-conspirator, gang, or associaiton member.  
20 There is no issue of material fact, and Papayans is entitled to judgment. Papayans  
21 also joins in the summary judgment motions of all other Defendants. *Vazquez v.*  
22 *Central States Joint Bd.*, 547 F.Supp.2d 833, 867. (N.D.Ill. 2008).

23 DATED: July 24, 2017

HAVEN LAW

24  
25 By: /s/ Peter T. Haven  
26 Peter T. Haven  
27 Attorney for Defendant  
28 MICHAEL R. PAPAYANS